

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVI APPELLATE SIDE JURISDICTION

WRIT PETITION NO 7552 OF 2005

Mr Sunil C Mandal....Petitioner

VS

Mrs Mamta Sunil Mandal.. ..Respondent

Mr. C.G.Gavnekar for G S Hiranandani for
petitioner

Ms Seema Sarnaik for respondent

CORAM: S.U.KAMDAR J.

Dated 5.12.2005

P.C:

. The present petition challenges the order dated 29.8.2005 by which the application for vacating the exparte order of injunction passed against the petitioner has been dismissed for non- appearance. The reason given is that the petitioner was absent for five consecutive dates. Though there is no substantial ground set out for setting aside the order, however, in view to see that the matter is required to be decided on merits and party does not suffer by virtue of the default in appearance, I set aside the order dated 29.8.2005 on the following condition:

"The petitioner to deposit before the Family

court Bandra, Mumbai a sum of Rs.1 lac within a period of 8 weeks from today. The respondent will be at liberty to withdraw the same subject to the final accounting of the maintenance amount as per the fresh order to be passed by the family court. The petitioner to pay cost to the respondent quantified at Rs.5000 within a period of 2 weeks from today. On both the aforesaid conditions being fulfilled the application before the family court will stand restored. The family court thereafter hear the matter on merits and determine the matter afresh on or before 31.3.2006. The deposit of Rs.1 lac would be subject to the adjustment as per the order to be passed afresh by the family court. Till the disposal of the application the order dated 3.4.2005 not to be given effect to i.e. till 31.3.2006 and if the matter is not heard by that time the order will operate".

. Petition is disposed of accordingly.